

AMENDED IN ASSEMBLY AUGUST 18, 2010

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN ASSEMBLY JUNE 22, 2010

AMENDED IN ASSEMBLY JUNE 14, 2010

AMENDED IN SENATE APRIL 29, 2010

SENATE BILL

No. 1285

Introduced by Senator Steinberg

February 19, 2010

An act to amend ~~Sections 44949, 44955, and 44956~~ *Section 44955* of the Education Code, relating to education employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1285, as amended, Steinberg. Education employment.

(1) Existing law requires that, when a reduction in the number of certificated employees employed by a school district is authorized for specified reasons, the layoffs occur in order of employee seniority. Existing law provides certain exceptions to this requirement, including an exception for purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws. Existing law requires, for 39 months from the date of termination, that any employee who in the meantime has not attained 65 years of age have the preferred right to reappointment, in the order of original employment, as specified. Existing law provides certain exceptions to this requirement, including an exception for purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

This bill would provide that this exception relates to both pupils and certificated employees. *The bill also would state the intent of the Legislature to specify criteria and conditions for identifying schools analogous to the schools identified in the Reed v. LAUSD court order in which a school district may deviate from seniority-based layoffs for the purposes of ensuring compliance with constitutional requirements relating to equal protection of the laws. The bill also would state the intent of the Legislature to require that districts with schools that meet those criteria and conditions ensure that the proportion of layoffs affecting certificated employees in those schools is no greater than the district average.* The bill would require that, when classroom teachers, as defined, are subject to notice and layoffs pursuant to these provisions, that the proportion of classroom teachers who provide instruction in a classroom terminated at schools in deciles 1 to 3, inclusive, of the Academic Performance Index terminated at those schools in any given year as part of a reduction in the number of employees pursuant to this section shall be no greater than the proportion, rounded to the nearest whole number of classroom teachers, of classroom teachers noticed and, when applicable, terminated, respectively, in the school district as a whole.

~~(2) Existing law requires, when a reduction in the number of certificated employees employed by a school district is authorized for specified reasons, the notice of the termination of the services of an employee in the subsequent school year be given by the governing board to the employee, in a prescribed manner, before May 15. Existing law requires the superintendent of the district, prior to March 15 and before an employee is given the described notice, to give written notice to the governing board and the employee that it has been recommended that the notice be given to the employee, and stating the reasons therefor. Existing law authorizes an employee who is given this notice to request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. Existing law requires that an administrative law judge conduct this hearing, and issue a proposed decision to the governing board containing certain findings of fact and a determination as to the sufficiency of cause for the termination.~~

~~This bill would require that this determination also include a determination as to whether the notices of termination issued at schools in deciles 1 to 3, inclusive, of the Academic Performance Index violate the aforementioned limit on terminations of classroom teachers.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares that every
2 California child has a constitutional right, under the equal
3 protection clause of the California Constitution, to equal
4 educational opportunity.

5 (b) The Legislature finds that paragraph (2) of subdivision (d)
6 of Section 44955 of the Education Code provides that, for purposes
7 of a reduction in force, school districts may deviate from
8 terminating a certificated employee in order of seniority in order
9 to maintain or achieve compliance with the constitutional guarantee
10 of equal protection of the laws. It is therefore the intent of the
11 Legislature that school districts utilize this authority to prevent
12 disparate impacts of teacher layoffs on pupils' rights to education.

13 ~~SEC. 2. Section 44949 of the Education Code is amended to~~
14 ~~read:~~

15 ~~44949. (a) No later than March 15 and before an employee is~~
16 ~~given notice by the governing board that his or her services will~~
17 ~~not be required for the ensuing year for the reasons specified in~~
18 ~~Section 44955, the governing board and the employee shall be~~
19 ~~given written notice by the superintendent of the district or his or~~
20 ~~her designee, or in the case of a district which has no~~
21 ~~superintendent by the clerk or secretary of the governing board,~~
22 ~~that it has been recommended that the notice be given to the~~
23 ~~employee, and stating the reasons therefor.~~

24 ~~Until the employee has requested a hearing as provided in~~
25 ~~subdivision (b) or has waived his or her right to a hearing, the~~
26 ~~notice and the reasons therefor shall be confidential and shall not~~
27 ~~be divulged by any person, except as may be necessary in the~~
28 ~~performance of duties. However, the violation of this requirement~~
29 ~~of confidentiality, in and of itself, shall not in any manner be~~
30 ~~construed as affecting the validity of any hearing conducted~~
31 ~~pursuant to this section.~~

32 ~~(b) The employee may request a hearing to determine if there~~
33 ~~is cause for not reemploying him or her for the ensuing year. A~~
34 ~~request for a hearing shall be in writing and shall be delivered to~~
35 ~~the person who sent the notice pursuant to subdivision (a), on or~~

1 before a date specified in that subdivision, which shall not be less
2 than seven days after the date on which the notice is served upon
3 the employee. If an employee fails to request a hearing on or before
4 the date specified, his or her failure to do so shall constitute his or
5 her waiver of his or her right to a hearing. The notice provided for
6 in subdivision (a) shall advise the employee of the provisions of
7 this subdivision.

8 (e) In the event a hearing is requested by the employee, the
9 proceeding shall be conducted and a decision made in accordance
10 with Chapter 5 (commencing with Section 11500) of Part 1 of
11 Division 3 of Title 2 of the Government Code and the governing
12 board shall have all the power granted to an agency therein, except
13 that all of the following shall apply:

14 (1) The respondent shall file his or her notice of defense, if any,
15 within five days after service upon him or her of the accusation
16 and he or she shall be notified of this five-day period for filing in
17 the accusation.

18 (2) The discovery authorized by Section 11507.6 of the
19 Government Code shall be available only if request is made
20 therefor within 15 days after service of the accusation, and the
21 notice required by Section 11505 of the Government Code shall
22 so indicate.

23 (3) The hearing shall be conducted by an administrative law
24 judge who shall prepare a proposed decision, containing findings
25 of fact and a determination as to whether the charges sustained by
26 the evidence are related to the welfare of the schools and the pupils
27 thereof. The proposed decision shall be prepared for the governing
28 board and shall contain a determination as to the sufficiency of
29 the cause, including a determination of whether the notices at the
30 employee's schoolsite, for schools in deciles 1 to 3, inclusive, of
31 the most recently published rankings of all public schools based
32 on the Academic Performance Index, pursuant to subdivision (a)
33 of Section 52056, exceed the district average in violation of
34 paragraph (1) of subdivision (d) of Section 44955 and a
35 recommendation as to disposition. However, the governing board
36 shall make the final determination as to the sufficiency of the cause
37 and disposition. None of the findings, recommendations, or
38 determinations contained in the proposed decision prepared by the
39 administrative law judge shall be binding on the governing board.
40 Nonsubstantive procedural errors committed by the school district

1 ~~or governing board of the school district shall not constitute cause~~
2 ~~for dismissing the charges unless the errors are prejudicial errors.~~
3 ~~Copies of the proposed decision shall be submitted to the governing~~
4 ~~board and to the employee on or before May 7 of the year in which~~
5 ~~the proceeding is commenced. All expenses of the hearing,~~
6 ~~including the cost of the administrative law judge, shall be paid~~
7 ~~by the governing board from the district funds.~~

8 The board may adopt from time to time such rules and procedures
9 not inconsistent with provisions of this section as may be necessary
10 to effectuate this section.

11 (d) ~~Any notice or request shall be deemed sufficient when it is~~
12 ~~delivered in person to the employee to whom it is directed, or when~~
13 ~~it is deposited in the United States registered mail, postage prepaid~~
14 ~~and addressed to the last known address of the employee.~~

15 (e) ~~If after request for hearing pursuant to subdivision (b) any~~
16 ~~continuance is granted pursuant to Section 11524 of the~~
17 ~~Government Code, the dates prescribed in subdivision (e) that~~
18 ~~occur on or after the date of granting the continuance and the date~~
19 ~~prescribed in subdivision (e) of Section 44955 which occurs after~~
20 ~~the date of granting the continuance shall be extended for a period~~
21 ~~of time equal to the continuance.~~

22 SEC. 3.

23 SEC. 2. Section 44955 of the Education Code is amended to
24 read:

25 44955. (a) A permanent employee shall not be deprived of his
26 or her position for causes other than those specified in Sections
27 44907 and 44923, and Sections 44932 to 44947, inclusive, and a
28 probationary employee shall not be deprived of his or her position
29 for cause other than as specified in Sections 44948 to 44949,
30 inclusive.

31 (b) Whenever in any school year the average daily attendance
32 in all of the schools of a district for the first six months in which
33 school is in session shall have declined below the corresponding
34 period of either of the previous two school years, whenever the
35 governing board determines that attendance in a district will decline
36 in the following year as a result of the termination of an interdistrict
37 tuition agreement as defined in Section 46304, whenever a
38 particular kind of service is to be reduced or discontinued not later
39 than the beginning of the following school year, or whenever the
40 amendment of state law requires the modification of curriculum,

1 and if in the opinion of the governing board of the district it shall
2 have become necessary by reason of any of these conditions to
3 decrease the number of permanent employees in the district, the
4 governing board may terminate the services of not more than a
5 corresponding percentage of the certificated employees of the
6 district, permanent as well as probationary, at the close of the
7 school year. Except as otherwise provided by statute, the services
8 of a permanent employee shall not be terminated under the
9 provisions of this section while any probationary employee, or any
10 other employee with less seniority, is retained to render a service
11 that the permanent employee is certificated and competent to
12 render.

13 In computing a decline in average daily attendance for purposes
14 of this section for a newly formed or reorganized school district,
15 each school of the district shall be deemed to have been a school
16 of the newly formed or reorganized district for both of the two
17 previous school years.

18 As between employees who first rendered paid service to the
19 district on the same date, the governing board shall determine the
20 order of termination solely on the basis of needs of the district and
21 the pupils of the district. Upon the request of any employee whose
22 order of termination is so determined, the governing board shall
23 furnish in writing no later than five days prior to the
24 commencement of the hearing held in accordance with Section
25 44949, a statement of the specific criteria used in determining the
26 order of termination and the application of the criteria in ranking
27 each employee relative to the other employees in the group. ~~For~~
28 ~~employees assigned to schools ranked in deciles 1 to 3, inclusive,~~
29 ~~of the most recently published rankings of all public schools based~~
30 ~~on the Academic Performance Index, pursuant to subdivision (a)~~
31 ~~of Section 52056, the statement of specific criteria shall include~~
32 ~~data supporting the determination of whether the notices issued~~
33 ~~satisfy paragraph (1) of subdivision (d) of this section.~~ This
34 requirement that the governing board provide, on request, a written
35 statement of reasons for determining the order of termination shall
36 not be interpreted to give affected employees any legal right or
37 interest that would not exist without such a requirement.

38 (c) Notice of the termination of services shall be given before
39 the 15th of May in the manner prescribed in Section 44949, and
40 services of these employees shall be terminated in the inverse of

1 the order in which they were employed, as determined by the board
2 in accordance with the provisions of Sections 44844 and 44845.
3 In the event that a permanent or probationary employee is not
4 given the notices and a right to a hearing as provided for in Section
5 44949, he or she shall be deemed reemployed for the ensuing
6 school year.

7 The governing board shall make assignments and reassignments
8 in such a manner that employees shall be retained to render any
9 service that their seniority and qualifications entitle them to render.
10 However, prior to assigning or reassigning any certificated
11 employee to teach a subject that he or she has not previously taught,
12 and for which he or she does not have a teaching credential or that
13 is not within the employee's major area of postsecondary study or
14 the equivalent thereof, the governing board shall require the
15 employee to pass a subject matter competency test in the
16 appropriate subject.

17 ~~(d) (1) Notwithstanding subdivision (b), for purposes of~~
18 ~~maintaining stability of classroom teachers at schools in deciles 1~~
19 ~~to 3, inclusive, of the most recently published rankings of all public~~
20 ~~schools based on the Academic Performance Index, pursuant to~~
21 ~~subdivision (a) of Section 52056, the proportion of classroom~~
22 ~~teachers noticed and, when applicable, terminated at those schools~~
23 ~~in any given year as part of a reduction in the number of employees~~
24 ~~pursuant to this section shall be no greater than the proportion,~~
25 ~~rounded to the nearest whole number of classroom teachers, of~~
26 ~~classroom teachers noticed and, when applicable, terminated,~~
27 ~~respectively, in the school district as a whole.~~

28 ~~(2) For the purposes of paragraph (1), the term "classroom~~
29 ~~teacher" means both certificated employees whose primary~~
30 ~~responsibility is to provide classroom instruction and certificated~~
31 ~~employees who provide instructional support to those employees.~~
32 ~~Certificated employees who provide instructional support to~~
33 ~~certificated employees providing classroom instruction include,~~
34 ~~but are not necessarily limited to, all of the following:~~

- 35 ~~(A) Resource teachers.~~
- 36 ~~(B) Mentor teachers.~~
- 37 ~~(C) Content specialists.~~
- 38 ~~(D) Instructional coaches.~~
- 39 ~~(E) Special education teachers and related special education~~
40 ~~specialists.~~

~~(3) In addition to the requirements prescribed in paragraph (1),~~
(d) (1) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(A) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(B) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws as it applies to pupils and to certificated employees.

(2) *It is the intent of the Legislature to specify criteria and conditions for identifying schools analogous to the schools identified in the Reed v. LAUSD (Los Angeles County Superior Court Case BC432420) court order in which a school district may deviate from seniority-based layoffs for the purposes of ensuring compliance with constitutional requirements relating to equal protection of the laws. It is further the intent of the Legislature to require that districts with schools that meet those criteria and conditions ensure that the proportion of layoffs affecting certificated employees in those schools is no greater than the district average.*

~~SEC. 4. Section 44956 of the Education Code is amended to read:~~

~~44956. Any permanent employee whose services have been terminated as provided in Section 44955 shall have the following rights:~~

~~(a) For the period of 39 months from the date of such termination, any employee who in the meantime has not attained the age of 65 years shall have the preferred right to reappointment, in the order of original employment as determined by the board in accordance with the provisions of Sections 44831 to 44855, inclusive, if the number of employees is increased or the discontinued service is reestablished, with no requirements that were not imposed upon other employees who continued in service; provided, that no probationary or other employee with less seniority shall be employed to render a service that the employee is~~

1 ~~certificated and competent to render. However, prior to~~
2 ~~reappointing any employee to teach a subject that he or she has~~
3 ~~not previously taught, and for which he or she does not have a~~
4 ~~teaching credential or that is not within the employee's major area~~
5 ~~of postsecondary study or the equivalent thereof, the governing~~
6 ~~board shall require the employee to pass a subject matter~~
7 ~~competency test in the appropriate subject.~~

8 ~~(b) The aforesaid right to reappointment may be waived by the~~
9 ~~employee, without prejudice, for not more than one school year,~~
10 ~~unless the board extends this right, but such waiver shall not~~
11 ~~deprive the employee of his or her right to subsequent offers of~~
12 ~~reappointment.~~

13 ~~(c) Notwithstanding subdivision (a), a school district may~~
14 ~~deviate from reappointing a certificated employee in order of~~
15 ~~seniority for any of the following reasons:~~

16 ~~(1) The district demonstrates a specific need for personnel to~~
17 ~~teach a specific course or course of study, or to provide services~~
18 ~~authorized by a services credential with a specialization in either~~
19 ~~pupil personnel services or health for a school nurse, and that the~~
20 ~~employee has special training and experience necessary to teach~~
21 ~~that course or course of study, or to provide those services, which~~
22 ~~others with more seniority do not possess.~~

23 ~~(2) For purposes of maintaining or achieving compliance with~~
24 ~~constitutional requirements related to equal protection of the laws,~~
25 ~~as it applies to pupils and to certificated employees.~~

26 ~~(d) As to any such employee who is reappointed, the period of~~
27 ~~his or her absence shall be treated as a leave of absence and shall~~
28 ~~not be considered as a break in the continuity of his or her service,~~
29 ~~he or she shall retain the classification and order of employment~~
30 ~~he or she had when his or her services were terminated, and credit~~
31 ~~for prior service under any state or district retirement system shall~~
32 ~~not be affected by such termination, but the period of his or her~~
33 ~~absence shall not count as a part of the service required for~~
34 ~~retirement.~~

35 ~~(e) During the period of his or her preferred right to~~
36 ~~reappointment, any such employee shall, in the order of original~~
37 ~~employment, be offered prior opportunity for substitute service~~
38 ~~during the absence of any other employee who has been granted~~
39 ~~a leave of absence or who is temporarily absent from duty;~~
40 ~~provided, that his or her services may be terminated upon the return~~

1 to duty of said other employee and that said substitute service shall
2 not affect the retention of his or her previous classification and
3 rights. If, in any school year the employee serves as a substitute
4 in any position requiring certification for any 21 days or more
5 within a period of 60 schooldays, the compensation the employee
6 receives for substitute service in that 60-day period, including his
7 or her first 20 days of substitute service, shall be not less than the
8 amount the employee would receive if he or she were being
9 reappointed.

10 (f) During the period of the employee's preferred right to
11 reappointment, the governing board of the district, if it is also the
12 governing board of one or more other districts, may assign him or
13 her to service, which he or she is certificated and competent to
14 render, in said other district or districts; provided, that the
15 compensation he or she receives therefor may in the discretion of
16 the governing board be the same as he or she would have received
17 had he or she been serving in the district from which his or her
18 services were terminated, that his or her service in the said other
19 district or districts shall be counted toward the period required for
20 both state and local retirement, as defined by Section 22102, as
21 though rendered in the district from which his or her services were
22 terminated, and that no permanent employee in said other district
23 or districts shall be displaced by him or her.

24 It is the intent of this section that the employees of a school
25 district, the governing board of which is also the governing board
26 of one or more other school districts, shall not be at a disadvantage
27 as compared with employees of a unified school district.

28 (g) At any time prior to the completion of one year after his or
29 her return to service, he or she may continue or make up, with
30 interest, his or her own contributions to any state or district
31 retirement system, for the period of his or her absence, but it shall
32 not be obligatory on the state or district to match such
33 contributions.

34 (h) Should he or she become disabled or reach retirement age
35 at any time before his or her return to service, he or she shall
36 receive, in any state or district retirement system of which he or
37 she was a member, all benefits to which he or she would have been
38 entitled had such event occurred at the time of his or her

- 1 ~~termination of service, plus any benefits he or she may have~~
- 2 ~~qualified for thereafter, as though still employed.~~

O